PUBLIC PROSECUTOR v. GOPALAN

[O.Cr. J. (Wan Yahya J.) April 5, 1985]

[Malacca – Criminal Trial No. 1 of 1984]

Criminal Law and Procedure – Sentence – Charge of culpable homicide not amounting to murder – Matters to be considered in assessing sentence.

Penal Code s.304 – Culpable homicide not amounting to murder – Sentence.

In this case the accused had pleaded guilty to a charge of culpable homicide not amounting to murder.

Held: in the circumstances of this case the imposition of a sentence of 14 years' imprisonment would be expedient with a view to the reformation of the accused, but as no facts were alleged which would have placed the offence under the first limb of section 304, the accused was convicted under the second limb of the section and sentenced to seven years' imprisonment only.

Case referred to:

(1) *Mohamed Jusoh bin Abdullah & Anor.* v. *Public Prosecutor* [1947] M.L.J. 130.

CRIMINAL TRIAL.

Abdul Rahim bin Uda (Deputy Public Prosecutor) for the Public Prosecutor.

Atma Singh Veriah for the accused.

Cur. Adv. Vult.

Wan Yahya J.: On May 30, 1984 the accused was committed by the Magistrate Malacca to stand trial before the High Court on a charge of murder. On the date of hearing in the High Court on March 11, 1985 the learned Deputy Public Prosecutor compassionately reduced the charge to one under section 304 of the Penal Code. Upon the accused's unequivocal plea of guilty, in the presence and hearing of his counsel, this Court sentenced him to 7 years' imprisonment to run from and be backdated to his date of arrest *i.e.* over one year and two months previously. Albeit the accused somewhat feels that we have been unkind to him and has therefore preferred this appeal against that sentence.

The brief summary of events leading to this offence is as follows. The accused was the Chief Officer and the deceased the Chief Steward of the ship, M.V. Kota Rukun. On January 18, 1984 a mess steward who denied night stacks to the accused on the instruction of the deceased was assaulted by the accused. The deceased intervened and in turn punched the accused. The fight was stopped by members of the crew. However, the matter did not end there. Two weeks later when the ship Kota Rukun was unloading her cargos at Malacca harbour and her crew were on shore, the accused confronted the deceased as the latter was returning to the ship. During the ensuing fight the accused inflicted on the deceased numerous injuries with some kind of weapon, which defence counsel describes as a flat metal rod picked up from the ground, resulting in almost instantaneous death of the deceased. The weapon was never found by the police.

In mitigation, counsel for the accused submitted that the accused had approached the deceased "with the intention of clearing up misunderstanding"; that the fight broke out unintentionally and that the accused had picked up a flat metal rod in contemplation of being attacked with a concealed weapon by the deceased. Counsel also went up to some length to describe the accused's antecedent career and his success and implored this court to treat him leniently so that his aged father would not be deprived of accused's support.

In *Mohamed Jusoh bin Abdullah & Anor.* v. *Public Prosecutor*(1), the then Court of Appeal observed that the guidelines for imposing sentences should include consideration on the nature of the offence; the circumstances in which it was committed; the degree of deliberation shown by the offender; the provocation, if any, received by the accused; the degree of violence involved and the antecedents of the accused.

In our present case there is no doubt at all that causing the death of another person under section 304 of the Penal Code is a very serious offence. As for the next four matters to be considered, defence counsel claims that the incident was unplanned and arose out of provocation. I am unable to accede to the learned counsel's views. I cannot perceive the line of reasoning and neither did counsel explain why the Chief Officer, the second highest ranking officer in the ship should choose the dark and desolate lane of Malacca dockyard at 9.30 at night as a suitable venue for sorting out misunderstanding with a Chief Steward in preference to the comforts of the ship's cabin and the advice of his ship mates. Neither was anything said about who threw the first punch or who started the fight. Likewise, I reject the accused's insinuation that he had struck the deceased in self-defence when the former was seen to be bending down in an act to draw what he believed to be a

concealed weapon. If there was such a weapon it would have no doubt been found, either strapped to the deceased's legs or in the vicinity of his body. Even if the accused believed that the deceased was so armed, there was no reason why he should not have fled from the scene as he had every opportunity of doing so. Instead, acting on mere suspicion and without even a glimpse of any weapon being used, he had taken what his counsel described as a flat metal rod and savagely attacked deceased. The violent and vicious nature of the accused's atrocity is clearly reflected in the eighteen injuries suffered by the deceased and as shown in the photograph in the records. The weapon was not recovered but whatever it was and howsoever described by the accused, it must have been a two edged sharp pointed instrument like a spear or a double edged knife. Judging from the gaping and penetrating wounds on the deceased's body, the nature of these injuries further indicate that they were inflicted in a stabbing rather than warding off blows. If the accused had resorted to the weapon merely to defend himself or to disarm the deceased, he had only to land a few blows with a flat metal rod instead of stabbing with it. The injuries on the deceased are inconsistent with those received in preventive or disarming motion by the accused. According to the doctor who performed the post-mortem the victim to such injuries would only have survived up to 3 minutes.

The last matter to be considered is the accused's antecedent. Unfortunately what was unfolded before this court relate merely to his proficiency rather than his conduct. A swift scramble upwards the ladder of success does not in any way negate a person's dormant propensity. The events which transpired on the 18th when the accused assaulted a mess steward for merely giving a negative answer to his request and the subsequent confrontation with the deceased demonstrate his unrestrainable, volatile and vengeful temper.

In an offence of this nature, I consider the imposition of 14 years' imprisonment to be expedient with a view to the accused's reformation. Happily for him, the learned Deputy Public Prosecutor omitted to refer in the facts of the case matters which would have placed the offence under the first limb of this section. I am therefore compelled to convict the accused under the second limb of section 304 of the Penal Code and to impose a sentence of 7 years only.

Order accordingly.

Solicitors: *Atma Singh Veriah & Co.*

PUBLIC PROSECUTOR v. RAJAPPAN

[A.Cr.J. (Chan J.) April 9, 1985]

[Kuala Lumpur – Selangor Criminal Application No. 3 of 1984]

Penal Code, s. 494 – Bigamy committed outside Malaysia – Whether court in Malaysia had jurisdiction to try offence.

Criminal Law and Procedure – Jurisdiction of Magistrate's Court – Whether offence of bigamy committed outside Malaysia can be tried in Malaysia.

R married *P* in India in 1947. In 1954 they came with their children to live in Malaya. In March 1984, *R* while on a visit to India married *S*. He returned to Malaysia in May 1984 with the new bride. His first wife *P* was still living and their marriage was still subsisting. *R* was charged in the Magistrate Court at Klang for bigamy under section 494 of the Penal Code on August 19, 1984. The Magistrate refused to hear the case on the ground that she had no jurisdiction to try a case of bigamy which was committed outside Malaysia. The Public Prosecutor applied to the High Court under section 127(c) of the Criminal Procedure Code to determine whether a magistrate court had jurisdiction to try the offence.

Held: as the law stood, bigamy was not an offence in Malaysia if the second marriage took place outside the country even though the spouse in the earlier marriage was still living. Until there is a change in the law, the courts in Malaysia do not have jurisdiction to try offences committed outside the limits of Malaysia except those offences found under Chapter VI of the Penal Code.

[*Editorial Note:* On a reference by the Public Prosecutor to the Supreme Court (Supreme Court Criminal Reference No. 2 of 1985) the decision of Chan J. was upheld.]

Cases referred to:

(1) *Emperor* v. *Mt. Soni* A.I.R. 1936 Nagpur 13.
(2) *R.* v. *Robinson* [1938] 26 Cr. App. R. 129.
(3) *Public Prosecutor* v. *Nai Prasit* [1961] M.L.J. 62.
(4) *MacLeod* v. *Attorney-General for New South Wales* [1891] A.C. 455.
(5) *R.* v. *Hilaire* [1903] 3 N.S.W. State Rep. 228.
(6) *Jefferys* v. *Boosey* 4 H.L.R. 815, 926; 10 E.R. 681
(7) *Re Bigamy Sections of Code* (1897) 27 S.C.R. 461.
(8) *Pheroze* v. *State* A.I.R. 1964 Bom. 264.

CRIMINAL APPLICATION.

Tan Hock Chuan (Deputy Public Prosecutor) for the applicant.

M. Sachiananda for the respondent.

Cur. Adv. Vult.

Chan J.: Rajappan s/o Chinna Kounder married Palaniyammal d/o Nalli Kounder in India in 1947. In 1954, they left India with their children to come to live in this country. In March 1984, Rajappan visited India. While he was there, he